OFFICE OF
ATTORNEY GENERAL
STATE OF LOUISIANA
BATON ROUGE

May 18, 1943

State Mineral Board
Capitol Building
Baton Rouge, Louisiana

Gentlemen: Re: State Lease No. 309

Pursuant to resolution of the State Mineral Board dated February 11, 1943, we beg to report upon State Lease No. 309, one of sixteen leases which the Attorney General was requested "to take action immediately to recover for the State of Louisiana all profits or overriding royalties fraudulently or illegally obtained in connection with any mineral lease covering State owned property and to enforce full and complete compliance with the reasonable development and due diligence requirements of such leases. * * **

This lease was entered into by Governor O. K. Allen for the State and James A. Noe October 23, 1934, and affected certain portions of the beds of Ouachita River and Bayous Bartholomew, Roeuff, DeGiard, D'Arbonne and DeLoutre bordering or lying within the parishes of Ouachita, Morehouse and Union. The larger part of the leased acreage was in the productive limits of the Monroe Gas Field. The area leased totaled about 3300 acres.

The authority of the Governor to lease State mineral lands flowed from Act 30 of the Extra Session of 1915, as amended, as so stated by the Supreme Court in State ex rel. Brenner vs. Noe, Governor, et al., 171 So. 708, 712:

> "The power to lease lands, including lake and river beds and other bottoms, belonging to the state of Louisiana, is the exclusive province of the Legislature (Constitution of 1921, art. 4, sec. 2). By its Act No. 30 of the Extra Session of 1915, as amended by Act No. 315 of 1926, the Legislature made the Governor its mandatary to lease the lands belonging to the state under the terms and conditions prescribed in the statute. * * **

Act 30 continued in effect and controlled the letting of State mineral leases until it was repealed by Act 93 of 1936, Section 21.

The execution of the lease was prompted by written application of Noe in the manner prescribed by Section 2 of Act 30. Published notice in conformity with the Act was had in the required papers during the period provided calling for bids to be opened October 23, 1934.

The Noe bid was the only bid submitted. Attached to the letter containing the bid was a lease form styled "Exhibit A." The bid with land description and Exhibit A omitted was as follows:

"Baton Rouge, Louisiana,
October 20th, 1934.

"Honorable Oscar K. Allen,
Governor of Louisiana,
Baton Rouge, Louisiana.

Dear Sir:

"The undersigned herewith submits his bid for a mineral lease on certain lands in the State of Louisiana, more particularly described as follows:

(Description omitted)

which have been advertised for lease by notice dated heretofore requiring bids to be submitted on or before October 23, 1934. For such bid the undersigned proposes and offers to drill within thirty days after procuring all necessary permits after the execution and delivery of the proposed lease, or to forfeit the lease, and the undersigned further proposes and offers to drill fifty wells on the leased premises, each well drilled to be completed within eighteen (18) months from and after the commencement of the first well; the drilling of each and all of said wells to be subject, however, to the terms and provisions of a proposed lease to be entered into by the State of Louisiana, as lessor, and the undersigned, as lessee, a true and exact copy of which proposed lease, containing the provisions and conditions upon which this bid is made and submitted, is hereto attached, marked Exhibit A, and made a part hereof.

"It is estimated that fifty (50) wells drilled in the area to be covered by the lease, will require an expenditure of approximately SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS ($750,000) and such expenditure would of necessity be a consideration to the State of Louisiana, and the drilling of said wells would result in the State of Louisiana receiving large sums of money as royalties, which royalties to be payable to the State of Louisiana under the terms of said lease, are as follows:

"1/8 of the oil produced and saved;
$2.00 per long ton of sulphur produced and saved;
10 cents per ton for all potash produced and saved;
1/8 of the net proceeds derived from the sale of gas;
1/8 of all other minerals produced and saved.

"The blank spaces in the form of lease hereto attached are to be filled in correctly with the necessary names and dates, when the lease is executed, but otherwise the attached lease is the form which the undersigned proposes to have executed by the lessor and which the undersigned proposes to execute as lessee, and all of the terms and provisions in the attached form of lease are intended to be treated and considered as a part of this bid in exactly the same manner as if all of the provisions of said lease were herein again written and restated.

"Respectfully submitted:

(Signed) James A. Noe ."

The bid was promptly accepted and forthwith a lease was executed (October 23, 1934) corresponding exactly to the bid.

Paragraphs I, III, IV and V of the lease are herewith reproduced:

"I.

"Subject to all other terms and provisions hereof, lessee agrees to drill fifty (50) wells on the herein leased premises, each well drilled to be completed within eighteen (18) months from and after the commencement of drilling of the first well.

"The drilling of the first well is to be commenced not later than thirty (30) days after the lessee has procured all permits necessary and required for the drilling of such well.

"If in the exercise of the rights herein granted, oil, gas or other minerals be discovered then this lease shall continue in full force and effect so long as such oil, gas, or other minerals can be produced by the lessee.

"Lessee may drill as many wells (additional to the fifty wells above mentioned) as lessee may choose but this lease shall not be construed so as to create or impose upon lessee any express or implied obligation to drill such additional wells; and all wells drilled by lessee (including the first fifty and any additional wells) shall be drilled at such locations as lessee may select."

"III.

"After the first well has been drilled to completion, should lessee elect that it no longer cares to carry on drilling operations, then the said lessee is granted the right to cease such operations, and lessee shall, if it so elects, retain its rights in and to ten (10) acres of the property for each and every well which lessee shall have drilled thereon in an effort to produce oil or gas therefrom; provided that said well or wells shall be located on that portion or portions of the property so retained by lessee; and provided further, that lessee's rights in and to that portion or the premises so retained shall endure only so long as lessee shall produce oil, gas or other mineral from one or more of said wells on said premises in paying quantities.

"Should lessee at any time elect to abandon operations as above provided, then lessee shall notify lessor in writing of its intention to so do, and shall specify what portion or portions of the said premises the said lessee is entitled by virtue hereof to retain and operate; and lessee shall, as soon as practicable thereafter, execute any instrument or instruments necessary to a proper release of the undeveloped portion of the premises."

"IV.

"After the first well has been drilled to completion should lessee elect to abandon drilling operations hereunder then the said lessee shall be entitled to retain its rights in and to forty (40) acres for each and every gas well from which it shall at such time be producing gas in paying quantities; provided, also, that any well or wells so producing shall be located on that portion or portions of the property retained by lessee; and provided further, that lessee's rights to so hold such portion or portions of the said premises shall endure only so long as lessee shall produce therefrom gas in paying quantities."

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"V.

"If at any time during the life of this lease, lessee elects to no longer maintain the rights herein granted in effect, then the said lessee shall have the right to release and reassign unto lessor any and all rights hereby held unto lessee, whereupon this contract shall wholly terminate."

On November 9, 1934, Noe contracted with Farrell and others, transferring certain interests in the least but retaining for himself a one-fourth interest and the right to twenty drilling locations. His interest was assigned to the Win or Lose Corporation on November 20, 1934, in exchange for 96 shares of its stock.

After the completion of a number of wells (four) by Farrell and associates, the Register of the State Land Office, Oscar E. Allen, Governor, James A. Noe, Win or Lose Corporation and Farrell and associates entered into a supplemental agreement purporting to be authorized by Act 9 of the Extra Session of 1928, in which the foregoing transfers and resulting interests were disclosed, and in which it was declared that controversies had arisen as to the proper interpretation of the lease and the obligations and performances thereunder, which required the rewriting of paragraphs I, III and IV to read (except for detailed land descriptions):

"I.

"Subject to all of the terms and provisions hereof, Lessee agrees to drill fifty wells on the herein leased premises.

"The drilling of the first well is to commence not later than thirty days after the Lessee has procured all permits necessary and required for the drilling of such wells.

"Lessee agrees to drill thirty of said wells on the herein leased premises, on tracts not hereinafter described in Items A, B, C, D, E, F, G and H, each of said thirty (30) wells drilled to be completed within eighteen (18) months from and after the commencement of the drilling of the first well.

"The remaining twenty of said fifty wells are to be located upon certain portions of the property herein leased and particularly described as follows:

(Description omitted)

"The last mentioned twenty (20) wells are to be located as follows:

"Five (5) wells are to be located on the property set out in 'A' just above.

"Three (3) wells are to be located on the property set out in 'B' just above.

"Two (2) wells are to be located on the property set out in 'C' just above.

"Four (4) wells are to be located on the property set out in 'D' just above.

"Two (2) wells are to be located on the property set out in 'E' just above.

"Two (2) wells are to be located on the property set out in 'F' just above.

"One (1) well is to be located on the property set out in 'G' just above.

"One (1) well is to be located on the property set out in 'H' just above.

"For the purpose of development under the terms and provisions hereof, the property described in Item 'A' above shall be deemed to consist of five equal units of approximately twenty acres; Item 'B' above shall be deemed to consist of three equal units of approximately twenty acres each; Item 'C' above shall be deemed to consist of two equal units of approximately twenty acres each; Item 'D' above shall be deemed to consist of four equal units of approximately twenty acres each; Item 'E' above shall be deemed to consist of two equal units of approximately twenty acres each; Item 'F' above shall be deemed to consist of two equal units of approximately twenty acres each; Item 'G' above shall be deemed to consist of one unit of approximately twenty acres; and Item 'H' above shall be deemed to consist of one unit of approximately twenty acres. The items are all shown in red on the attached plat, marked 'A' for identification, and the land embraced in each item is subdivided into said units and are marked Unit A-1, A-2, A-3, A-4, A-5, B-1, B-2, C-1, C-2, D-1, D-2, D-3, D-4, E-1, E-2, F-1, F-2, G-1 and H-1.

"Each of the twenty wells hereinabove referred to drilled by Lessee under the terms and provisions of this lease shall perpetuate said lease, insofar as it affects the unit upon which said well is located, so long as said well is capable of producing oil or gas in paying quantities.

"In the event Lessee has not commenced the drilling of a well on each of the units hereinabove provided for on or before the 23rd day of October, 1935, this lease, as to such unit or units upon which a well or wells has not been commenced, shall terminate as to both parties, unless the Lessee on or before that date shall pay or tender to the Lessor, through Register of the State Land Office, at Baton Rouge, Louisiana, the sum of Seven Hundred Fifty and no/100 ($750.00) Dollars for each of such units then undeveloped with respect to which Lessee wishes to continue said lease in full force and effect, which payment shall operate as a rental and cover the privilege of deferring the commencement of a well or wells on such unit or units for a period of twelve months from said date. In paying or tendering the aforesaid deferred rental payments, should Lessee elect not to maintain said lease in force by said payment as to each and every unit upon which development has not commenced as of the date when such payment is due, Lessee shall then accompany such payment or tender with a detailed statement showing the particular unit or units covered by the rental payment then being made. The payments or tenders of rentals may be made by check or draft of Lessee, mailed and delivered to the Lessor, as above noted, on or before such date of payment. In like manner and upon like payments or tenders, the commencement of said wells or any of them may be further deferred for a like period for the same number of months successively, provided this lease shall not, in the absence of production, as otherwise herein noted, be kept in force as to said tracts described in Items "A, B, C, D, E, F, G and H" above, through said payments for a period longer than five years from October 23, 1933; and it is further provided that the lease herein granted, in so far as it embraces and affects the twenty locations hereinabove described, shall continue in full force and effect until October 23, 1940, and during said time shall not be forfeited or annulled as to all or any of said units or locations, for any cause whatsoever other than the failure to pay the annual rentals or renewals hereinabove provided for.

"A well shall be deemed to be commenced when the first material for drilling operations is placed on the ground.

"If in the exercise of the rights herein granted, oil, gas or other minerals be discovered, then this lease shall continue in full force and effect so long as such oil, gas or other minerals can be produced by the Lessee.

"Lessee may drill as many wells (additional to the fifty wells above mentioned) as Lessee may choose, but this lease shall not be construed so as to create or impose upon Lessee any express or implied obligation to drill such additional wells; and all wells drilled by Lessee (including the first fifty and any additional wells) shall be drilled at such locations as Lessee may select."

"III.

"Insofar as this lease covers and affects property not covered by Items 'A, B, C, D, E, F, G and H,' said items set out particularly in Paragraph 1 hereof, it is agreed after the first well has been drilled to completion, should Lessee elect that it no longer cares to carry on drilling operations, then the said Lessee is granted the right to cease such operations, and Lessee shall, if it so elects, retain its rights in and to ten (10) acres of the property for each and every well which Lessee shall have drilled thereon in an effort to produce oil or gas therefrom; provided that said well or wells shall be located on that portion or portions of the property so retained by Lessee; and provided, further, that Lessee's rights in and to that portion of the premises so retained shall endure only so long as Lessee shall produce oil, gas or other minerals from one or more of said wells on said premises in paying quantities.

"Should Lessee at any time elect to abandon operations as above provided, then Lessee shall notify Lessor in writing of its intention to so do, and shall specify what portion or portions of the said premises the said Lessee is entitled by virtue hereof to retain and operate; and Lessee shall, as soon as practicable thereafter, execute any instrument or instruments necessary to a proper release of the undeveloped portion of the premises."

"IV.

"Insofar as this lease covers and affects property not covered by Items 'A, B, C, D, E, F, G and H,' said Items set out particularly in Paragraph I hereof, it is agreed after the first well has been drilled to completion, should Lessee elect to abandon drilling operations hereunder, then the said Lessee shall be entitled to retain its rights in and to forty (40) acres for each and every gas well from which it shall at such time be producing gas in paying quantities; provided,

> also, that any well or wells so producing shall be located on that portion or portions of the property retained by Lessee; and provided, further, that Lessee's rights to so hold such portion or portions of the said premises shall endure only so long as Lessee shall produce therefrom gas in paying quantities."

This instrument was executed by the State officials, Noe and the Win or Lose Corporation on August 21, 1935, by Farrell and Rhoads on August 24, 1935, and Simmons on August 26, 1935. Recorded instruments filed on August 21, 1935, transferred to the United Gas Public Service Company ten of the described drilling locations for a recited consideration of $25,000.00. The remaining ten locations were sold to the Interstate Natural Gas Company, Inc. for a recited consideration of $25,000.00. Subsequently, we are informed, the Win or Lose Corporation admitted receiving on account of these two transfers $320,000.00.

There have been other agreements affecting this lease in whole or part but as they have only a relatively small bearing, if any, upon the issues involved, we omit reference thereto.

It is important, however, that notice be taken of the development under the lease and its amendment. Thirty-five wells were completed on or before June 27, 1937 and to May 11, 1943 the State had received in rentals $73,500.00 and in royalties $159,137.85.

Undoubtedly, most of the original acreage (3300) has been earned and remains subject to the lease as long as the well or wells on the separate units produce in paying quantities. The acreage so bound or earned can, in our opinion, be readily ascertained.

We are not aware of any charge of fraud in the granting of the lease on October 23, 1934. But one irregularity has been noted. It is, in our opinion, of no legal consequence. Noe's bid failed to respond to the published notice in that it did not offer to the State a bonus. The notice provided:

> "All bids to offer a bonus for such lease. Minimum royalties payable to the State of Louisiana under said lease shall be one-eighth of all oil produced and saved; two dollars for each long ton of sulphur produced and saved; ten cents per ton for all potash produced and saved; one-eighth of the net proceeds derived from the sale of gas; and one-eighth of all other minerals produced and saved.
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> "Lessee must agree to drill within thirty days after procuring all necessary permits after the execution and delivery of such lease, or to forfeit the lease, and such

> lease shall contain appropriate and necessary previsions for the drilling of offset wells for the protection of the state's interests and shall provide that the lessee shall not sublease or assign said lease without the written consent of the governor."

It may well have been that the chief gain of the State would be derived from development and that it was not to the advantage of the State to reject Hoe's bid. The notice called for a drilling obligation. Would a cash bonus of a few hundred dollars have been controlling? Since the State lands involved had been undergoing drainage for more than ten years, can one say the Governor acted capriciously under the circumstances with but one bid to consider? In such instances the courts have refused to substitute their judgment for that of the administrative official. In the case of State ex rel. Porterie vs. Grace, et al., 166 So. 133, it was held (166 So. 137):

> "It is conceded in the brief for the Governor and the register of the state land office that the only authority that is conferred upon them by this statute is the authority to determine primarily the meaning of the terms and conditions of the mineral leases granted by the state, to the end of determining whether the terms and conditions of such contracts are complied with; hence it is conceded by these officials that the statute does not purport or attempt to deprive the courts of jurisdiction over questions or controversies that have been decided by the Governor and the register of the state land office under authority of this statute. The only limitation of authority in that respect is that the courts will not place their judgment above that of the executive or administrative officers who are designated by statute as the agents of the state in the determination of matters peculiarly within the knowledge of such officers, and as to which the necessary discretion is confided in them, specifically by the statute which makes them the agents of the state. That does not mean that the officers so designated are invested with 'judicial power' in the sense in which that power is exercised by the courts. Conery v. New Orleans Water-Works Co., 41 La. Ann. 910, 7 So. 8; Holmes v. Tennessee Coal, Iron & Railroad Co., 49 La. Ann. 1465, 22 So. 403; Edison Electric Co. v. City of New Orleans, 130 La. 693, 58 So. 512; State v. Guidry, 142 La. 422, 76 So. 843. In the latter case it was said that the right of the Legislature to delegate to an administrative board or agency the authority to determine the facts upon which the law is to be applied was beyond dispute."

The attacks made through the press were directed at the supplemental agreement signed by the Governor on August 21, 1935, and the assignments. We are here concerned with the determination of the validity of these instruments, and the rights of the State arising from these transactions.

To properly test the legality of the amendment, the rights of the lessee in the original act of lease must be appraised. Paragraphs I, III, IV and V (quoted above) of the Act dated October 23, 1934, are convincing that the lessee was not bound unconditionally to drill fifty or any other number of wells after completion of the first well. It was expressly stipulated (Paragraph I) that the agreement to drill was "subject to all other terms and provisions hereof, * * **" and the obligation was thus qualified by Paragraphs III, IV and V. Three (III) and four (IV) declared that "after the first well had been drilled to completion, * * **" lessee could elect to abandon drilling obligations and retain ten acres of the property producing oil, gas or other minerals (III), and forty acres for each producing gas well (IV). Paragraph V permitted lessee to wholly terminate the contract at any time upon releasing all rights to the lessee.

The first paragraph (I) of the original lease did provide that as to each well drilled, it should be "completed within eighteen (18) months from and after the commencement of drilling of the first well." It also stated that the wells to be drilled by lessee should be drilled at such locations as lessee may select. This simply meant that the State had the right to stop further drilling after the eighteen month period, and after agreeing with lessee upon the earned acreage about each producing well, cause a release of the remaining acreage. If, however, the State acquiesced in drilling operations after the expiration of the period, a rule of our jurisprudence would recognize lessee's right to hold the acreage earned thereby. Caldwell vs. Alton Oil Co., Inc., (1926), 161 La. 139, 108 So. 314; Lieber vs. Ouachita Natural Gas & Oil Co., (1922), 153 La. 160, 95 So. 532; Transcontinental Oil Co. vs. Spencer et al. (1925), 6 Fed. 2d 866, (C.C.A. 5th).

The amendment (agreement of August 21, 1935) was entered into before the eighteen month period expired. The last day would have been about July 11, 1936 (estimated from January 10, 1935 - the thirtieth day after permit secured for first well).

In effect the new agreement: -

(a) Segregated or further confirmed the acreage assigned to Farrel et als. on November 9, 1934.

(b) Particularly described each of the twenty locations reserved to the Win or Lose Corporation, and

(c) Extended the time within which drilling on each of the twenty locations could be deferred after October 23, 1935, upon payment of $750.00 per well, per year, but in no event beyond October 23, 1940.

Act 9 of the Extra Session of 1928 is cited by the parties as authority for the undertaking. We quote in full Section 1 thereof:

"Be it enacted by the Legislature of Louisiana, That the Register of the State Land Office is hereby authorized and designated as the representative of the State of Louisiana to adjust, settle and finally determine, by agreement with the lessees or other owners thereof, and with the approval of the Governor of the State of Louisiana, all matters, questions or controversies arising respecting the interpretation of oil, gas and/or other mineral leases heretofore or hereafter granted by the State, and the performance of the covenants, conditions, obligations and stipulations thereof; and full, final and plenary authority to that end and for that purpose is hereby vested in said officers."

No logical reason occurs to the writer why the State could or should have objected to severing the interest of Farrell et als. from the twenty locations held by the Win or Lose Corporation. Nor do we find any disadvantage to the State by fixation of the twenty locations. A prudent

official would perhaps have deemed it a duty to definitely describe each location to the end that if it be not drilled within the time provided it would be returned to the State without further ado, eliminating needless negotiations and some expense.

The strongest objection rests, therefore, not upon the changes just discussed but hinges on the right of the officials to extend the time (beyond the end of the eighteen month period) during which further wells might be drilled. The extension granted was from July 11, 1936 to October 23, 1940, but carried delay rentals from October 23, 1935.

The twenty locations were considered as each containing twenty acres, a total of 400 acres. Estimates by a competent engineer give this acreage at 335 acres, but as the varying widths of the streams have not been determined in the computations, the recited 400 acres should be considered fair. For postponing the privilege of so drilling, the lessee agreed to rentals which the State has collected in the sum of $73,500.00.

When it is considered that apparently no offers were made to develop this acreage prior to the Noe application, it can hardly be said that the Governor acted imprudently or to the disadvantage of the State. The action so taken was, in our opinion, authorized by Act 9 of 1928 (Extra Session).

The Board's resolution of February 11th, also suggests action to recover for the State "all profits or overriding royalties fraudulently or illegally obtained in connection with any mineral lease covering State owned property." Unless and until the lease be annulled and set aside, we can conceive of no legal theory under which the State would have a right to participate in the profits derived from the sale of the lessee's interest. Even if the contract is invalidated, we can find no precedent in Louisiana jurisprudence which would permit recovery by the State of profits from the transaction to which it is not a party.

The State has become enriched from the operations on this lease by $232,637.85 in rentals and royalties, plus severance taxes. No doubt, large sums have been expended in development by various parties claiming under the lease. Shall the State after receiving silently rentals, royalties and severance taxes year after year be now permitted to deprive these persons of the property developed?

It was said in State ex rel. Shell Oil Co., Inc. vs. Register of State Land Office (Nov. 27, 1939) 193 La. 883, 192 So. 519, 520, Land, J:

> "It is well settled that the doctrine of estoppel applies to the State just as it does to individuals.
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> "The Federal Circuit Court of Appeals for the Fifth Circuit, in which the State of Louisiana is included, recognized the doctrine of estoppel in Police Jury of Richland Parish v. Caldwell & Company, 26 F. 2d 74, 78. In that case the Police Jury took the position that Caldwell & Company was not entitled to certain interest, and other benefits under bonds it had acquired, because it alleged that the manner of acquiring the bonds was irregular and unconstitutional.
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> "The court said: 'In that case we are of opinion that the question whether the contract or statute is in violation of the Constitution is immaterial. That question would doubtless be an important one, if the contract for the sale and purchase of bonds were executory. But here the contract has been fully and completely performed. If it were between individuals, they would be estopped to attack it as invalid. In our opinion, the parish, having received the benefits of the contract, is estopped to escape its burdens. In order to recover unearned interest, it would be obliged to return the proceeds of the bonds it had received, and that it does not offer to do. The contract will have to be enforced as the parties made it. It cannot be assumed that Caldwell & Co. would have accepted the bonds upon any other terms than those agreed upon. In Louisiana the doctrine of estoppel applies to the state and its subdivisions, to the full extent that it does to individuals. State v. Cockrem, 25 La. Ann. 356; State v. Taylor, 28 La. Ann. 460; State v. Ober, 34 La. Ann. 359; State v. New Orleans, etc. R. Co., 104 La. 685, 29 So. 312; Gilmore v. Schenck, 115 La. 386, 39 So. 40; Clark v. City of Opelousas, 147 La. 1, 84 So. 433.'"

See also to same effect Reeves v. Leche, Governor, et al. (1940), 194 La. 1070, 195 So. 542, 544. This opinion of the Supreme Court also declared (p. 545):

> "The State has made no tender to the lessee of the money received by the State under the lease. Under the admitted state of facts, it is clear that defendants are estopped from asserting the invalidity of State Lease No. 338 by their reconventional demand or otherwise."

Painstakingly, we have examined what we believe to be all the public records and recorded instruments bearing on Lease No. 309. Persons in State

employment who reasonably would be expected to have known of any irregularities or improper conduct in the letting of this lease and its amendment have denied their knowledge of any wrongdoing. There is no evidence to indicate fraud in connection with this lease and its amendment. Certainly a suit should not be filed based upon nothing more than "suspicious circumstances." The quality of the evidence sufficient to establish fraud is found in the Civil Code (R. C. C., Art. 1848):

> "Fraud, like every other allegation, must be proved by him who alleges it, but it may be proved by simple presumptions, or by legal presumptions, as well as by other evidence. The maxim that fraud is not to be presumed, means no more than that it is not to be imputed without legal evidence."

At no time during any of the foregoing transactions was there a prohibitory statute that rendered Noe (State Senator from May 9, 1932 to February 26, 1935, and Lieutenant Governor from February 26, 1935 to January 28, 1936, and Governor from January 28, 1936 to May 12, 1936) ineligible to bid on and secure a lease on State mineral lands. Nor was Governor Allen, a shareholder in the Win or Lose Corporation, enjoined by statute from owning stock in a corporation securing oil or gas rights under a State lease granted to another by him.

We are thus brought to the determination: -

(1) That no irregularity destroyed the validity of the Act of Lease entered into on October 23, 1934.

(2) That the Register of the State Land Office and the Governor were empowered under Act 9 of 1928 (Extra Session) to enter into the supplemental agreement of August 21, 1935, and in so doing did not abuse the discretion granted therein.

(3) That the Act of August 21, 1935, was not invalid.

(4) That the State has no right to share in profits resulting from assignments in which it did not own a pecuniary interest.

(5) That the record indicates no evidence of fraud.

(6) That a Governor, Lieutenant Governor or State Senator during these transactions was not prohibited by statutory law from being a party to an instrument in which he had or would later acquire an interest.

(7) That the State cannot maintain an action to recover socalled illegal profits from a transaction to which it is not a party.

A preliminary report on this lease No. 309 was made by Mr. Gensler, Special Assistant Attorney General, on October 31, 1941, and it was suggested in this preliminary report that it would be in order to file suit seeking the cancellation of this lease, the basis being the failure of the lessee or his assign to discharge the obligation to drill fifty wells on the leased premises within eighteen months after the date of the lease.

Mr. Gensler, in this preliminary report, recommended a thorough investigation of this file and lease.

We have since made a thorough investigation of this file and lease and have discovered that on July 23, 1941, lease No. 494 was entered into by Honorable Joseph L. McHugh, Director of the Department of Minerals, and J. E. Farrell, M. S. Rhoads, D. J. Simmons, and Independent Oil & Gas Company of that portion of the acreage covered by both the original and amended lease, which had reverted to the State under the terms of these leases.

This State lease No. 494 is signed by all of the lessees; the Independent Oil & Gas Company, Inc., (the successor of the Win or Lose Corporation) was represented by Mrs. Huey P. Long, President; the proper witnesses appear on the lease; and the lease is signed on behalf of the State of Louisiana by Joseph L. McHugh, Director of the Department of Minerals.

The lease bears the approval of the Board of Minerals, being signed by Mr. James W. Smither, Vice-Chairman, the other two members of the Board at that time being Major B. A. Hardy, your present Chairman, and Mr. Robert L. Knox.

I respectfully submit, as a matter of law, that the State of Louisiana, by this State lease No. 494, has acquiesced in and ratified the original lease previously described, as well as the amendment of the same, as set out in the commencement of this letter.

By having accepted the benefits of State lease No. 309, and the amendment thereto, and making a new lease on acreage which reverted back to the State, under the terms of the original lease No. 309, and its amendment, the State of Louisiana has ratified the validity of State lease No. 309 and its amendment.

The Department of Minerals was created in the Reorganization Act No. 47 of 1940, and the same Act provided for the creation of a Board of Minerals. At the time this State lease No. 494 was signed on July 23, 1941, Mr. Joseph L. McHugh was the Director of the Department of Minerals, and the Board of Minerals, composed of the persons previously named.

The Governor, Sam H. Jones, by Executive Order, to carry out the terms of the Reorganization Act, transferred the functions of the State Mineral Board, as created by Act 93 of 1936, to the Board of Minerals, provided for in the Reorganization Act, and appointed the members.

The Board of Minerals and the Director, under the Reorganization Act, had, during its existence, full jurisdiction over the award of mineral leases on State owned property. This office did not act as attorney for the Department of Minerals or the Board of Minerals within that Department, the Department of Minerals and the Board of Minerals having its own attorney, Honorable George A. Wilson.

When the Reorganization Act, No. 47 of 1940, was declared unconstitutional by the Supreme Court in the case of Ricks vs. Close, et al., 201 La. 242, 9 So. 2d 534, the Department of Minerals and the Board of Minerals, as created by that Act, went out of existence, and the Governor reorganized the present State Mineral Board under the provisions of Act 93 of 1936.

From these findings, we conclude on the basis of all evidence before us that a suit by the State could not be successfully maintained and should not be instituted.

Respectfully submitted,

Edward L. Gladney, Jr.
Special Assistant Attorney General

ELG,Jr:j

COUNTERSIGNED:

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Attorney General